

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

STEVEN ROHRS JR.)	
Claimant)	
)	
VS.)	
)	
LANDOLL CORPORATION)	
Respondent)	Docket No. 1,005,158
)	
AND)	
)	
SAFECO)	
LIBERTY MUTUAL INSURANCE CO.)	
ROYAL & SUNALLIANCE INS. CO.)	
BUSINESS INSURANCE CO.)	
Insurance Carriers)	

ORDER

Respondent and one of its insurance carriers, Royal & SunAlliance Insurance Company, request review of a preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict on November 21, 2002. Judge Benedict determined claimant suffered a second accident on August 10, 2002, and ordered respondent and Royal & SunAlliance Insurance Company to provide temporary total disability compensation to claimant commencing August 11, 2002.

ISSUES

The claimant alleged he suffered a series of injuries arising out of and in the course of his employment with respondent. Initially, claimant complained of bilateral thumb and wrist problems which ultimately resulted in bilateral carpal tunnel surgery. After claimant was released to return to work without restrictions following the carpal tunnel surgery, he began to experience progressively worsening pain in his forearms. Ultimately, claimant underwent bilateral ulnar nerve transposition surgery. Because respondent was provided workers compensation insurance coverage by four different insurance carriers during claimant's alleged series of accidents, the carriers dispute liability for the compensation related to the ulnar nerve injury.

The Administrative Law Judge (ALJ) determined claimant suffered a second work-related injury while working for respondent and the date of accident for the second injury

was determined to be August 10, 2002. Accordingly, the temporary total disability benefits were assessed against Royal & SunAlliance Insurance Company (Royal) which provided respondent's workers compensation insurance coverage on that date.¹

Respondent and its insurance carrier, Royal raise the issue whether claimant suffered a second injury. Implicit in this argument is the contention that the claimant's forearm problems were a natural and probable consequence of the injury claimant suffered before Royal provided respondent's workers compensation coverage. Stated another way, they allege claimant's current need for temporary total disability benefits and the reason claimant is unable to continue to work for respondent is not the result of a series of new accidents caused by claimant's regular work activities after claimant was released to return to work following his bilateral carpal tunnel surgeries.

Respondent and its insurance carrier, Safeco Insurance Company (Safeco), argue claimant had been released after his bilateral carpal tunnel surgeries to his regular work duties without restrictions and worked several months before he began to experience progressive worsening pain in his forearms. As a result they argue claimant suffered a series of repetitive trauma to his forearms and elbows which is a new and separate injury. Accordingly, the ALJ's determination of a second injury with an accident date of August 10, 2002, should be affirmed.

Claimant contends his current need for temporary total disability benefits is the result of injuries he suffered while working after his bilateral carpal tunnel surgeries. Claimant argues that his elbow condition was aggravated and worsened by his employment with respondent and he suffered a new and separate accident. Accordingly, claimant requests the Board to affirm the ALJ's preliminary hearing Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the arguments contained in parties' briefs, the Board makes the following findings and conclusions:

The facts of this case are generally not in dispute. Claimant was employed by respondent as a welder. Claimant began experiencing pain in his upper extremities in 1998. As claimant continued working the pain progressed from his thumbs into his hands and wrists.

Claimant was finally diagnosed with bilateral carpal tunnel syndrome and had a surgical carpal tunnel release on his left wrist on September 25, 2001, and on his right wrist on October 9, 2001. Claimant was released to return to work on October 25, 2001, with

¹ It should be noted Safeco Insurance Company provided claimant's benefits related to the bilateral carpal tunnel surgeries but denied further benefits for the elbow complaints.

a 20-pound lifting restriction. On November 20, 2001, claimant was released to his regular job as a welder without any restrictions.

When claimant returned to work after the bilateral carpal tunnel surgeries he began to experience problems with his forearms and sought treatment with Dr. Patrick T. Hurlbut on December 20, 2001. Dr. Hurlbut noted the claimant's forearm pain was suggestive of ulnar nerve problems but also concluded the pain could be caused by inflammation in the area of the previous surgery. Claimant was provided anti-inflammatory medications and advised if the problems persist for several months, claimant would be reevaluated.

Claimant continued working and the bilateral forearm pain continued to worsen to the point that claimant began occasionally taking off half days from work. Claimant returned to Dr. Hurlbut on April 9, 2002, for additional treatment for the bilateral forearm pain. Ultimately, claimant had a right ulnar nerve transposition surgery on August 11, 2002, and a left ulnar nerve transposition surgery on October 17, 2002.

Although respondent and its insurance carrier, Safeco, provided medical and disability compensation benefits to claimant as a result of the bilateral carpal tunnel treatment and surgeries, Safeco declined to provide claimant benefits related to the additional forearm complaints and bilateral ulnar nerve surgeries. As previously noted, Royal also declined to provide benefits for that alleged injury.

Royal's workers compensation insurance coverage for respondent began on September 30, 2001. Royal describes the issue for Board review as, "Whether the claimant sustained a second, subsequent and distinct accident on August 10, 2002." Royal goes on and notes claimant suffered a series of accidents and was diagnosed with bilateral carpal tunnel syndrome as well as possible ulnar nerve entrapment during the time Safeco provided respondent's workers compensation insurance coverage and that carrier should be liable for payment of temporary total disability compensation.

Here, the Board concludes there is no dispute concerning the compensability of the claim. The dispute that arises in this case is whether claimant's need for preliminary hearing benefits is the result of his initial series of accidents which resulted in the bilateral carpal tunnel surgeries or whether such need is the result of his each and every day work activities after he returned to work on November 20, 2001, which constitutes a new and separate accident. The Board, therefore, concludes Royal's arguments pertain to what date of accident should control for the purpose of determining which insurance carrier is liable for claimant's current need for temporary total disability benefits.

The Board only has jurisdiction to review preliminary hearing findings in cases where one of the parties allege that the ALJ exceeded his or her jurisdiction.² This jurisdiction

² See K.S.A. 44-551(b)(2)(A).

includes the specific issues identified in K.S.A. 44-534a(a)(2) that raise questions only as to the compensability of the claim.³ Here, the issue is whether claimant's date of accident is before or after September 30, 2001, the beginning date of Royal's workers compensation insurance coverage. Regardless of which date of accident (or accidents) is found to be the precipitating cause for claimant's medical treatment and temporary total disability benefits, it does not alter the fact that the injury (or injuries) is the result of claimant's employment with respondent. That fact appears to be undisputed.

There is no dispute that claimant's present need for preliminary benefits is the result of an injury that arose out of and in the course of employment with respondent. The dispute is which insurance carrier should be responsible for paying claimant's workers compensation benefits. And that dispute is resolved by determining the appropriate date of accident, which is not an issue listed in K.S.A. 44-534a as jurisdictional and does not otherwise raise an issue that the Judge exceeded his jurisdiction.⁴ Clearly, the Judge did not exceed his jurisdiction.

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.⁵

The Board is unaware of any other provision in the Workers Compensation Act that purports to give the Board jurisdiction to review a preliminary hearing order for redetermining the liability among multiple insurance carriers.

The Board concludes, at this juncture of the proceedings, it does not have jurisdiction to review the ALJ's findings contained in his preliminary hearing Order and, therefore, the respondent and its insurance carrier, Royal's request for review is dismissed.

The parties may preserve the date of accident issue for final award as provided by K.S.A. 44-534a(a)(2), as amended. That statute provides in pertinent part:

Except as provided in this section, no such preliminary findings or preliminary awards shall be appealable by any party to the proceedings, and the same shall not be binding in a full hearing on the claim, but shall be subject to a full presentation of the facts.

³ See Carpenter v. National Filter Service, 26 Kan. App. 2d 672, 676, 994 P.2d 641 (1999).

⁴ Id.

⁵ Allen v. Craig, 1 Kan. App. 2d 301, 303-304, 564 P.2d 552, *rev. denied* 221 Kan. 757 (1977).

AWARD

WHEREFORE, it is the finding, decision, and Order of the Board that it does not have jurisdiction to review the findings contained in Administrative Law Judge Bryce D. Benedict's November 21, 2002, preliminary hearing Order and the respondent's appeal should be, and is hereby, dismissed.

IT IS SO ORDERED.

Dated this _____ day of January 2003.

BOARD MEMBER

c: John J. Bryan, Attorney for Claimant
Matthew J. Thiesing, Attorney for Respondent/Safeco
John M. Graham, Attorney for Respondent/Liberty Mutual
Joseph C. McMillan, Attorney for Respondent/Royal & SunAlliance
Kip A. Kubin, Attorney for Respondent/Business Insurance
Bryce D. Benedict, Administrative Law Judge
Director, Division of Workers Compensation